



Fiqh of Marriage: Class Twenty-Six

الحمد لله و الصلاة و السلام على رسول الله و بعد:

The Hadith:

To continue from last time, Ibn Kathir mentioned that there were perhaps 12 women whom were alone with the Prophet alayhi as salam, but with whom he did not consummate the marriage.

And he mentioned that there were women that he proposed to but he did not see them, that there are approximately 7 women.

Each of them, in these various categories, have special circumstances and reasons around them.

Then, the Ulema said what is the ruling regarding his wives after the Prophet alayhi as salam passed away?

The scholars state: They are the mothers of the believers. And they are haram from all of the Muslims.

As for the women who the Prophet alayhi as salam proposed to, but did not see, or stay alone with, they can remarry afterwards. Since there was no relationship between them.

But as for the women who the Prophet was alone with, but did not touch, such as the woman who he married, but she was in her hayd, so he sent her back until she became pure, and during this time his son Ibrahim passed away.

She said, "If he was really a Prophet, his son would not have died." The Prophet alayhi as salam said, "Go to your family." Or he divorced her and left.

And another, he said to her when he entered upon her, “Give yourself to me.”

She said, “Do royalty give themselves to the poor.” So he said, “Go to your family.”

And another who said, “I seek refuge in Allah from you.”

This women, who were alone with him, but he did not touch them, but gave them their dowry, but he told them to go back to their family. Can they get remarried?

The First opinion is that they cannot, since they were alone with the Prophet alayi asalam and removed their clothes. So this Khalwa is like touching.

And the proof of this is that he gave them their dowries.

But some Ulema say, there is no harm in them getting remarried, but it is better not to.

Once there was a woman named Layla bint al-Hatim, an Ansari woman, who came to the Prophet alayhi salam while he was sitting with his back towards the sun. She struck him with her hand or palm between his shoulders.

The Prophet alayhi as salam said, “Who is this who a black creature has eaten.”

She said “I, the daughter of the one who feeds the birds and races the wind. I am Layla bin al Hatim. I came to offer myself to you in order that you marry me.”

He said, “I have done so.”

She went back to her family and said, “I have married the Prophet, alahi as salam.”

They said, “What a terrible thing you have done!”

What a strange response, she married the Prophet alayhi as salam, and instead of congratulating her, they said, what a terrible thing you have done.

Why did they say this? They said, “You are a woman who is extremely jealous. And the Prophet alayhi as salam has other wives. We are afraid that you will be jealous over him, and he will make dua’ to Allah against you, and you will be destroyed.”

She returned to the Prophet alayhi as salam and said, “Please cancel our marriage.”

He said, “I have canceled it.”

So she married someone else, since there was no khalwa between her and the Messenger of Allah alayhi as salam, nor any relationship.

Ibn Kathir mentions: She married her cousin, then while she was bathing in one of the quarters of Madina, a garden, a black wolf attacked her and ate part of her, and she died.

This was a fulfillment of his words alayhi as salam, “Who is this, whom the black creature as eaten?”

It is a black wolf.

What concerns us is that the circumstances surrounding each of the marriages of the Prophet alayhi as salam had their specific contexts, and whoever reflects will realize, that there are no two women whom he had consummated marriage with and passed away leaving her behind, or from those whom he was alone with but did not touch, nor those whom he proposed to, that were from the same tribe.

The only exception to this was Aliyyah, and Amrah, who were both from the Ghifar Tribe.

Which gives us an immediate understanding, if only for the time being, that his marriages were not for the women themselves, nor out of seeking them, as much as it was for seeking to reconcile between the various Tribes.

And the Prophet alayhi as salam said, “I love to be an in-law to the Ansar (that is marry from the Ansar) but I dislike their extreme jealousy.”

And the jealousy that his wives had, such as Umm Salamah and others, was dealt with by the Prophet alayhi as salam by making dua’.

What is important is while mentioning the marriage of the Prophet alayhi as salam to Aliyya, we get an understanding for the various types of marriages entered into by the Prophet alayhi as salam:

Those whom he consummated marriage with.

Those whom he was alone with but did not consummate marriage.

And those whom he proposed to only.

And the one who he remained married to alone, who died while married to him, the loyal wife who sacrificed herself and her wealth, Sayyidatu Khadija bint Khuwailid, may Allah be pleased with her.

And the one who Allah blessed the Prophet with bearing children. And her story is related to the beginning of the dawah, and she used to spend her wealth for his sake, and prepare provision for him when he used to retreat to the cave of Hira'.

She spent her wealth when he was boycotted by the people, and other well known accolades.

Let us return to the Chapter of Marriage. The Prophet alayhi as salam sent back some of his wives when he noticed on them leprosy.

The Narration:

عُمَرُ بْنُ الْخَطَّابِ (قَالَ : { أَيُّمَا رَجُلٍ تَزَوَّجَ امْرَأَةً , فَدَخَلَ بِهَا ,
فَوَجَدَهَا بَرَصًا , أَوْ مَجْنُونَةً , أَوْ مَجْدُومَةً , فَلَهَا الصَّدَاقُ
بِمَسِيئِهِ إِيَّاهَا , وَهُوَ لَهُ عَلَى مَنْ غَرَّهَ مِنْهَا } أَخْرَجَهُ سَعِيدُ بْنُ
مَنْصُورٍ , وَمَالِكٌ

Umar bin al Khattab said, “If any man marries a woman and after sleeping with her finds that she is affected with Barass, insanity or leprosy, she gets her dowry for having intercourse with her, and it is returned to him from the one who deceived him with her.”

We come to this tradition of Umar, may Allah be pleased with him.

“Any man who marries, and finds a woman with Barass,” and this is a skin disease. If it is found in its early stages and may be treated, but if it is left it could increase.

According to medicine, it is a hereditary disease and can be passed on to one’s children.

“Or insane, or afflicted by leprosy,” which is a terrible disease, may Allah grant us good health, that afflicts the limbs, and causes the extremities to deteriorate, and it could affect the nose, and it gives off a smell that is repugnant, and decay because the skin and flesh decay do to it.

The Amir al Mu’mineen Umar saw a woman afflicted with leprosy making Tawaaf around the Ka’aba.

He came near to her and said, “O female servant of Allah, it would be better if you remained in your house, and not harm the people.”

By sight, since this will hurt them, and they will be hurt mentally by the smell.

She immediately left, and did not even complete the circumambulation, and went to her home and stayed there.

When Umar passed away, it was said to her, ‘come out.’ She said, “Why?”

They said, “The one who forbade you has passed away.”

She responded, what beautiful words, “I did not obey him in life only to disobey him in death.”

A woman who was ill, with leprosy, and it could affect the mind, and she says these wise words, “I did not obey him in life only to disobey him in death.”

So leprosy is an illness that spreads, and we stay away from the word contagious, so that someone does not think of the hadith that says, “Laa ‘adwaah,” “There is no contagion.”

But before we mention that hadith, we must also remember the hadith of the Prophet alayhi as salam, “Flee from the leper like one flees from a lion.”

And a leper once came to give his allegiance to the Prophet alayhi as salam, and when he took his hand out and extended his hand to give the pledge, the Prophet alayhi as salam said to him, “Keep your hand away, we have already accepted your pledge!”

And the Prophet alayhi as salam forbade looking too much at the leper, saying that “it affects the heart and sight.”

And the hadith, “La ‘adwaa” “There is not contagion,” has been the source of much research, and the outcome of that is that what is meant is:

“There is no contagion” by itself, (without Allah’s permission.)

And this is proven if one takes the bacteria of the sick person whose illness is contagious, and places it in a test tube, it will reproduce.

So there is no doubt that illness can spread, which some people call contagion.

The fact that illnesses are contagious is proven, no doubt.

This can be by a person by touching, scratching, or rubbing, or sharing the same container.

However, this illness spreading by itself, by its own power and effect, no, this is what is negated, “Laa ‘adwaa” i.e. by itself.

And sickness has no effect by itself, since it is a creation, and the creation has no power to affect another creation by itself, but by Allah’s Power.

And a person complained that he had a group of camels which were healthy, and a single camel with scabies came and afflicted all of them with scabies, the Prophet alayhi as salam said, “Then who afflicted the first one with scabies?”

It can only be an affliction and test from Allah, SWT.

And if we find that in reality that immunizations are given by the exact same bacteria that cause the disease.

What concerns us is that leprosy is from the disease that give the man the right to annul the marriage with a woman.

And likewise, insanity (Junoon). Junoon is different than (Ighma'), which come and goes, and is a result of illness and injury, while insanity is a permanent condition. They both experience fits.

But the Majnoon is someone who does not have sense, and he is feared, since he acts without sense, and he might do something evil, while intending to do good.

So a Majnoon, one cannot be safe from, so if he finds his wife majnoon, he has the right to annul the marriage.

Here, according to Umar's statement, if he entered upon her, and was alone with her and found what he dislikes and left her, then she does not get the dowry.

The dowry is for making intimate relations permissible, and in this case he did not have intimate relations. So she gets no dowry.

“And she has the right to the dowry if he touches her,”

But if there was intimate relations, and he did not notice the hidden deficiency until afterwards, he has the right to annul the marriage, and he must pay the dowry to the wife due to the intimacy that took place.

Then, he has the right to request a return of this dowry from the one who deceived him (the guardian.)

The Hadith:

وَرَوَى سَعِيدٌ أَيْضًا : عَنْ عَلِيٍّ نَحْوَهُ , وَزَادَ : { وَبِهَا قَرْنٌ ,
فَزَوْجُهَا بِالْخِيَارِ , فَإِنْ مَسَّهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا
}

Sa'id also reported something similar from Ali and added: “And if she has something like a horn (a bone preventing sexual relations) her husband has the

choice whether to divorce her or keep her. And if he had intimate relations with her, she gets the dowry for the intercourse he had with her.”

The Explanation:

Al-Qarn and al-‘Afal are types of deficiencies that are specific to women.

In general, deficiencies in marriage are of three types: Those that are specific to women which men do not have.

And those specific to men, that women do not have.

And those that both of them may share in.

What is specific to a woman is Qarn and Afal:

They say that al-Qarn is the presence of a bone in the private part of a woman that prevents the husband from having relations with a woman.

And al-Afal is the closing of the opening where relations take place with the woman.

Another illness specific to women is al-Afan: which is a sexually transmitted disease which causes a bad smell from the private area of a woman.

These are diseases specific to women that prevent a man from enjoying full relations with the wife.

Complementary to this there are illnesses specific to men:

‘Aneen: Impotency, the inability to have an erection.

Majboob: One whose penis is cut off. The scholars differentiate between total and partial, and if it is partial and one is still able to have relations and give the wife her right, it is not permissible to annul the marriage.

Khasee’: Castration.

And there are types that are shared between the two:

Some Ulema say that the only diseases that permit the annulment of marriage are those mentioned in the statements of Umar, Ali, and the story of ‘Aliyyah.

These are: Leprosy, insanity, Qarn, ‘Ineen.

Ibn ul Qayyim said no: The matter is not to enumerate the types of illness.

Everything that causes one of the spouses to be put off from the other grants the right of annulment.

And the Hanabila state: If both spouses have a deficiency, and one of them accepts staying together, and the other does not, then the other has a right to annul the marriage. Say both of them have leprosy.

But one might say, “You have the same disease.”

But the nature of human beings is to dislike in others what they might be patient with in themselves.

Ibnul Qayyim, may Allah have mercy on them, states:

Every deficiency that prevents one of the spouses from fulfilling the purpose of marriage, which is fully enjoying intimate relations, grants the right of annulment.

Some of the ulema said, “Anything if found in a slave, would allow him to return it.”

And if they accept the fault in the other, then they do not have to right to annul the marriage later on.

And it was mentioned about some other illnesses, such as: baldness, chronic bad breath (al Bakhr), a breath that a person cannot be patient with, due to the stench.

It is much worse than bad breath, khuluf, which is mentioned in the hadith of fasting. Since the breath of a fasting person comes from the stomach vapors as a result of not having anything to eat, through the mouth. The siwak can remove this.

But the Bakhr is always present, whether the person is hungry, or satiated.

And it is said the animal with the worst Bakhr is the lion.

And for this reason, if a lion sleeps, you will see many flies landing on its mouth, due to its breath.

And the Prophet sent a woman to go and smell the breath of a woman who he wanted to marry, and look at the veins on her legs, between her calf and feet.

So there are ulema who mentioned more deficiencies than what has been mentioned, and some restrict it, while others state that there can be no grounds for an annulment whatsoever. This is attributed to the Dhahiriyya, and those who agree with them.

They say, if the one who finds the deficiency is the husband, he can divorce. And if it is the wife, she can request a Khula'.

But I think this opinion, that there cannot be annulment, could lead to oppressing one of the two parties.

And Allah knows best.

End of Class 26